



WPI

Spring 2022

Judicial Panel Training

Overview of Training Today

Title IX & Sexual Misconduct Policy Overview

- Prohibited Conduct
- Grievance Process for Title IX Sexual Misconduct compared to the Grievance Process for Non-Title IX Sexual Misconduct

The Hearing

- Hearing Officer
- Your Role on the Judicial Panel

Skills: Questioning Witnesses/Parties & Weighing Evidence

Key Resources

- [WPI's Title IX & Sexual Misconduct Policy](#), updated 8/2021
- **Trainings** – online training and in-person (Zoom) trainings. Training material on the Title IX Office [website](#).
- **Hearing Guidelines and Hearing Script** – to be provided prior to the hearing and reviewed during meeting with Hearing Officer
- **Questions?** Contact:
 - Title IX Coordinator John Stewart
 - Hearing Officer assigned to the hearing

Duties of the Parties and Participants

- **Duty of Honesty**

- Prohibits false statements or the submission of false information explicitly or by omission

- **Good Faith Participation**

- Investigation and hearing are neutral fact-gathering processes
- Prohibits knowingly interfering with the process

- **Duties of Promptness and Care**

- Review of the allegations should be conducted promptly and with care and sensitivity

- **Duty of Confidentiality**

- Maintain confidentiality to protect the privacy of all involved. Only inform those who need to know.

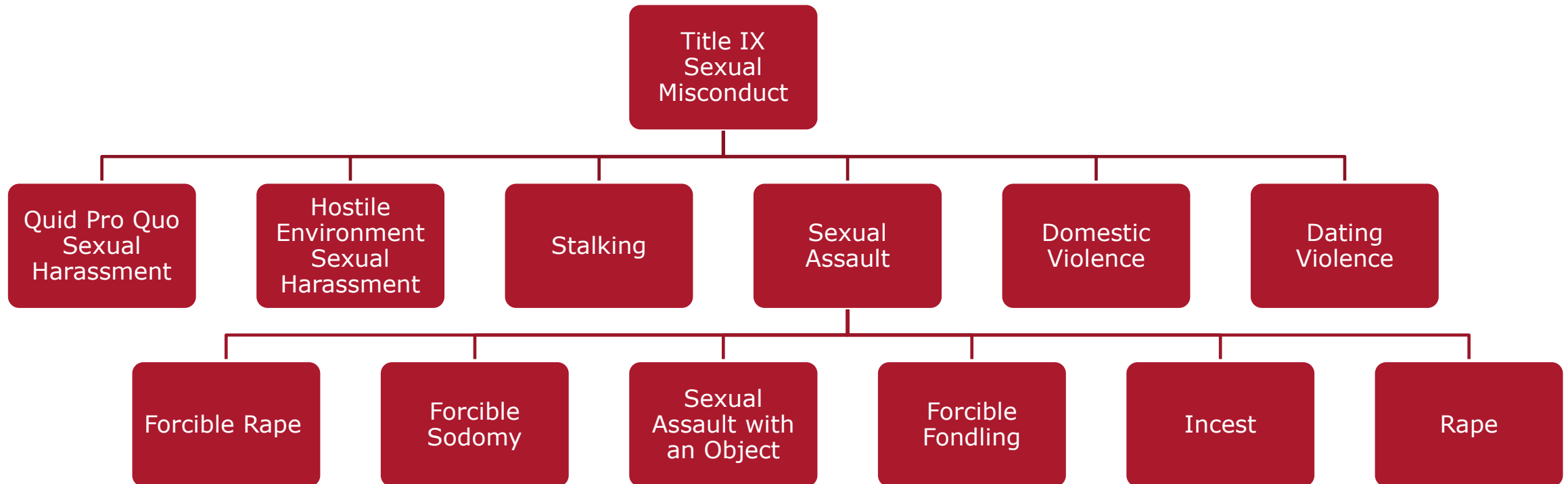


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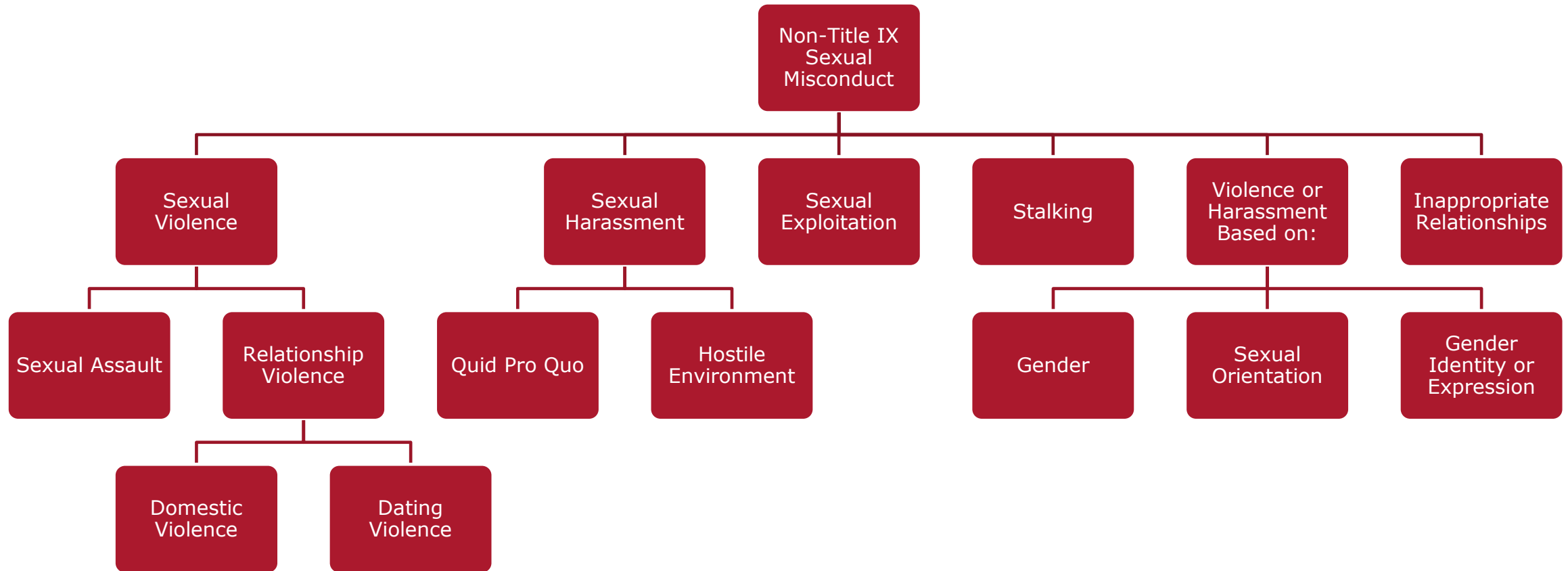
Judicial Panel Training

Title IX & Sexual Misconduct Policy Overview

Prohibited Conduct – Title IX



Prohibited Conduct – Non-Title IX



Consent

- **Positive, clear, unambiguous, ongoing and voluntary consent**
- Cannot be given if mentally or physically incapacitated
 - Disability
 - Incapacitation due to alcohol, drugs, medications, other intoxicating substance
 - When someone is unconscious, asleep, or otherwise unaware
- Legal age of consent is 16
- Consent must be received for each activity
 - Consent to one activity does not mean consent to another activity
 - Past consent does not mean ongoing future consent
- **Consider entire activity and all known relevant circumstances pertaining to the activity**

Grievance Process

- **Before the Grievance Process**

- The incident
- A report and formal complaint filed with the Title IX Office
 - Some allegations may be dismissed
- Consideration of supportive measures for the parties
- Potentially an informal resolution process that didn't work out

- **Grievance Process**

- Formal investigation – *Investigator + Parties and Witnesses*
- Review of evidence and completion of investigation report – *Investigator + Parties and Witnesses*
- **Hearing** – *Judicial Panel & Hearing Officer + Parties and Witnesses*
- **Decision** – *Judicial Panel*
- Appeal – *Parties + Appellate Officer*



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The Hearing

Prior to The Hearing

- You will receive:
 - The final Investigation Report and responses from the parties
 - All evidence collected by the Investigator
 - Hearing Guidelines and Script
- You will meet with the Hearing Officer to prepare and go over any questions you may have

Role of the Hearing Officer

- Outside attorney
- Administers the hearing
 - Maintains decorum and civility
 - Determines whether questioning by the parties is **relevant**
- Answers procedural questions
- Drafts the Determination Letter following the hearing
- **Will not participate in deliberations or vote on responsibility or sanctions**

Role of the Judicial Panel Members

- Actively participating in the hearing
 - Preparing for the hearing
 - Listening to testimony
 - Asking questions
- **Evaluates the relevance, credibility, and weight of the evidence**
- Deliberates and votes on responsibility and sanctions
- Approves

GP for Title IX Sexual Misconduct

For all hearings conducted under the Grievance Process for Title IX Sexual Misconduct, the procedure will be as follows:

- The Hearing Officer will open the hearing and establish the rules and expectations for the hearing.
- The Parties will each be given the opportunity to provide opening statements.
- The Judicial Panel will ask questions of the Complainant, Respondent, and witnesses.
- The Hearing Advisors will be given the opportunity for live cross-examination of the Complainant, Respondent, and witnesses.
 - During this live-cross examination the Hearing Advisor will ask the Complainant, Respondent, and witnesses relevant questions and follow-up questions directly, orally, and in real time, including questions that challenge credibility.
 - Before any cross-examination question is answered, the Hearing Officer will determine if the question is relevant and explain any decision to exclude a question as not relevant.
 - Cross-examination questions that are duplicative of those already asked may be deemed irrelevant if they have been asked and answered.
 - During the cross-examination, the Judicial Panel will have the authority to pause cross-examination at any time to ask the Judicial Panel's own follow up questions and enforce decorum in the hearing
 - If a Hearing Advisor chooses not to cross-examine a party or a witness, the party choosing to not cross-examine will affirmatively waive cross-examination in an oral statement to the Judicial Panel and Hearing Officer.
- Upon the conclusion of cross-examination, the Parties will each be given the opportunity to provide closing statements.
- The Judicial Panel will be provided a final opportunity to ask questions of the Complaint and Respondent before the hearing concludes.

GP for Non-Title IX Sexual Misconduct

For all hearings conducted under the Grievance Process for Non-Title IX Sexual Misconduct, the procedure will be as follows:

- The Hearing Officer will open the hearing and establish the rules and expectations for the hearing.
- The Parties will each be given the opportunity to provide opening statements.
- The Judicial Panel will ask questions of the Complainant, Respondent, and witnesses.
- The Complainant and the Respondent will be given the opportunity to question each other and any witnesses by asking questions in writing through the Judicial Panel.
 - Before the Judicial Panel relays any question to the party or witness, the Hearing Officer will determine if the question is relevant and explain any decision to exclude a question as not relevant.
 - Questions that are duplicative of those already asked may be deemed irrelevant if they have been asked and answered.
 - During this questioning, the Judicial Panel will have the authority to pause questioning at any time to ask the Judicial Panel's own follow up questions and enforce decorum in the hearing.
- Upon the conclusion of questioning, the Parties will each be given the opportunity to provide closing statements.
- The Judicial Panel will be provided a final opportunity to ask questions of the Complaint and Respondent before the hearing concludes.

Differences Between the Grievance Processes

Title IX Sexual Misconduct

- A party must have a Hearing Advisor at the hearing; WPI will appoint one if needed
- Cross-examination is conducted “live” by the Hearing Advisor

Non-Title IX Sexual Misconduct

- A party may have a Hearing Advisor. Hearing advisors may not speak at the hearing.
- Neither a party nor their Hearing Advisor may conduct cross-examination. They ask questions through the Judicial Panel.

The Decision

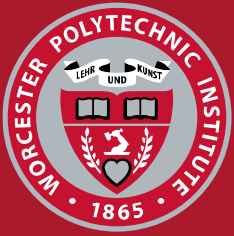
- **Responsibility**
 - Decision by majority vote; based on the preponderance of the evidence
- **Sanctions**
 - Consider: nature and circumstances of the misconduct, impact on the Complainant, prior disciplinary history at WPI, other mitigating or aggravating circumstances

- When the Respondent is a student, sanctions include community service, counseling, probation, suspension from residence hall, suspension from the university for one or more terms, and expulsion from WPI.
- When the Respondent is a staff or faculty member, sanctions include community service, counseling, probation, reassignment of duties, suspension with pay, suspension without pay, and termination of employment at WPI.

- **Remedies for Complainant** to restore or preserve access to WPI's Education Program or Activity

Determination Letter

- Drafted by the Hearing Officer
- Approved by a majority of the Judicial Panel
- Issued within 7 days of the hearing
- **Very detailed**, as it must describe all the procedural steps taken, findings of fact, determinations and rationales, and sanctions and remedies



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**Skills: Questioning Witnesses/
Parties & Weighing Evidence**

Types of Evidence

- Evidence presented **before the hearing**:
 - The final Investigation Report and responses from the parties
 - All evidence collected by the Investigator
- Evidence presented **at the hearing**:
 - Opening statements from the parties
 - Testimony from the parties and witnesses
 - Closing statements from the parties
- What is not evidence?
 - Evidence not presented as part of the hearing process or that is not in the final Investigation Report/evidence from the investigation
 - Your own opinions

Important Concepts

- **Relevant evidence and questions** – any evidence or questions that tend to make an allegation of Sexual Misconduct more or less likely to be true
 - Not Relevant:
 1. Evidence and questions about the Complainant's sexual predisposition or prior sexual behavior unless they are offered to prove that someone other than the Respondent committed the alleged Sexual Misconduct, or they concern specific incidents of the Complainant's prior sexual behavior with the Respondent and are offered to prove consent.
 2. Evidence and questions that constitute, or seek disclosure of, information protected under legally recognized privilege, unless the person holding the privilege has waived it.
 3. Any party's medical, psychological, and similar records unless the party has given voluntary, written consent.
 4. Any party's disclosures to their WPI Confidential Resource Advisor, as defined below, unless the party has given voluntary, written consent.
- **Credibility** – demeanor of the parties/witnesses, plausibility of testimony, consistency of testimony, reliability in light of corroborating or conflicting testimony or evidence
 - No stereotypes
 - A party may be absent from the hearing or refuse to answer questions – no inferences

Initial Concepts

- **Weight of Evidence**
 - **Higher weight:** relevant documentary evidence and first-hand testimony
 - Third-party knowledge allowed, but generally lower weight
 - Expert and character witnesses; polygraph evidence allowed, but generally lower weight if not fact-based or directed towards specific facts that occurred
- **Preponderance of the Evidence** – conclusion is based on facts that are more likely true than not

Questioning Witnesses

- Do not assume or guess, ASK questions of the witnesses to clarify information in the Investigation Report, evidence, and other testimony
- Consider the following:
 - What information is the witness most qualified to speak about?
 - Can this witness clear up any inconsistencies?
 - Is this witness credible?
 - The witness provides specific details vs. brief responses with few details
 - The witness's testimony is consistent with their prior statements, or other evidence and testimony

Questioning Witnesses

Do

- Ask open-ended questions, such as “Please explain . . .”.
- Ask about the basis for the witness’s answer.
- Ask the witness to clarify inconsistent testimony or evidence.
- Ask a follow-up question if a witness says, “I don’t know.”
- Listen actively to the witness’s testimony and responses.

Don’t

- Don’t ask questions that require a yes/no or multiple-choice answer.
- Don’t ask for a witness’s opinion or ask the witness to guess or speculate or consider hypotheticals.
- Don’t argue, accuse, or blame.
- Don’t ask about a party’s character, past sexual history, or “risky” behaviors.

Weighing Evidence During Deliberations

- Your decision must be supported by the evidence and witness testimony – what evidence was compelling or not?
- When looking at the evidence, consider:
 - Relevance
 - Certainties – Areas where witness agree
 - Contradictions – Areas where witnesses disagree. Is there corroborating evidence?
 - Credibility – Inconsistent statements, evasive or forthcoming, contradictory evidence?
 - Inferences – Conclusions drawn based on the certainties and contradictions



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Case Studies

Case Study 1

Complainant alleges that Respondent came over to his residence hall room and they both consented to certain sexual activities (kissing, touching, oral sex) but decided not to have sex.

Complainant alleged that after fooling around, Respondent had anal sex with him without consent. Complainant didn't stop Respondent but just "froze." The Respondent alleged that the Complainant consented by nodding for the Respondent to continue.

The Complainant let Respondent to stay overnight because it was late, and they had consensual anal sex in the next morning and were in a relationship for 2 months after that.

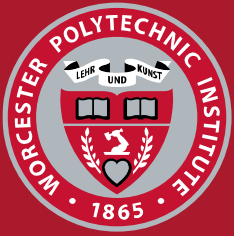
Case Study 2

Complainant and Respondent were at a party off-campus. Complainant alleges that Respondent followed her into the bathroom and they made out consensually. But then the Respondent then forced her to have sex and she alleges couldn't have consented because she was too drunk and she vomited on herself after she stumbled out of the bathroom.

Complainant alleges that she only had one beer and two shots, so she is unsure why she felt so drunk and vomited and she thinks that someone, maybe the Respondent, spiked her drink.

The Respondent explains that he couldn't have spiked the Complainant's drink because he never saw her with a drink in her hand. He explains that he and the Complainant were both drunk at the party, but the Complainant consented to sex just like she consented to making out in the bathroom.

No rape kit or toxicology screen was conducted because the Complainant didn't report the incident to Title IX or WPI Police until 3 months later after returning from summer break.



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Questions?

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